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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,473	11/09/2001	Robert F. Enenkel	CA920000040US1	5643
46320	7590	08/05/2005	EXAMINER	
CHRISTOPHER & WEISBERG, PA 200 E. LAS OLAS BLVD SUITE 2040 FT LAUDERDALE, FL 33301			STEVENS, THOMAS H	
			ART UNIT	PAPER NUMBER
			2123	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/008,473

Applicant(s)

ENENKEL ET AL.

Examiner

Thomas H. Stevens

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-44 were examined.

Section I: Response to Applicants' Arguments (1st Office Action)

35 USC § 112

2. Applicants are thanked for addressing this issue. Objection is withdrawn.

35 USC § 101

3. Applicants are thanked for addressing this issue; but arguments are non-persuasive to negate rejection. MPEP 2106, section 4 is clear with regard to mathematical problems, which were derived from natural phenomena, or a manipulation of abstract idea as non-statutory. The applicant cites a law case (*In State Bank and Trust Company v. Signature Financial Group, Inc*) that stated states the statutory subject matter related to the expression of numbers, such as price, profit, percentage, cost of loss; that is related to a practical application which the latter examples are a reflection of. However, the claims presented in this case are divorced from such a platform (e.g., airfoil surface, air flow rate, etc.) to a point where the limitations are a manipulation of mathematical equations based on natural phenomena. Furthermore, the specification states a "machine-implemental method" which is undefined. Rejection stands.

35 USC § 102

4. Applicants are thanked for addressing this issue; rejection is withdrawn.

Section II: Final Rejection (2nd Office Action)

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 20 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Applicants' specification indicates use of a computer memory product and provides examples, which would at least provide the instructions to a computer in a manner, which would enable the functionality of the instructions to be realized. However, a computer program product does not necessarily convey to one of ordinary skill in the art such a memory product.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

10. Claims 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 21-22 are clearly directed to software, per se, lacking storage on a computer readable medium (i.e., --computer memory product-- in accordance with Applicants' specification) to provide the instructions to a computer which when executed cause the computer to perform operations which provide a useful,

concrete and tangible result. Additionally, instructions cannot "tangibly" embody anything. Therefore, claims 21-22 are inaccurate under 112, 2nd.

11. Claims 23-44 fail to particularly point out and distinctly claim applicant's invention under 112, 2nd, since it is unclear what the components of the recited "machine" are. The recited steps appear to be directed to a method and not a machine. Additionally, "the steps" lacks antecedent basis.

Non-Statutory Material 35 USC § 101

12. MPEP 2106, section 4.

Claims to processes that do nothing more than solve mathematical problems or manipulate abstract ideas or concepts are more complex to analyze and are addressed below. If the "acts" of a claimed process manipulate only numbers, abstract concepts or ideas, or signals representing any of the foregoing, the acts are not being applied to appropriate subject matter. *Schrader*, 22 F.3d at 294-95, 30 USPQ2d at 1458-59. Thus, a process consisting solely of mathematical operations, i.e., converting one set of numbers into another set of numbers, does not manipulate appropriate subject matter and thus cannot constitute a statutory process.

13. Claims 1-44 rejected under 35 U.S.C. 101 because they recite mathematical operations with indefinite post-solution activity or results (e.g., claim 24, "said machine representation of a numerical value of said polynomial").

14. Claim 20 is rejected under 35 U.S.C. 101 because computer program product does not necessarily convey to one of ordinary skill in the art such a memory product. It is suggested that Applicant amend claim 20 to recite a --computer memory product-- to resolve this issue.

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2123

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

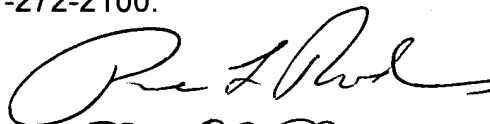
Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Tom Stevens whose telephone number is 571-272-3715, Monday-Friday (8:00 am- 4:30 pm) or contact Supervisor Mr. Leo Picard at (571) 272-3749. Central Fax number is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

July 27, 2005

THS


Paul L. Rodriguez 8/3/05
Primary Examiner
Art Unit 2125